No. 06-6411

9-29-2006

IN THE SUPREME COURT OF THE UNITED STATES

JAMES D. LOGAN, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the "civil rights restored" provision of 18 U.S.C. § 921(a)(20) applies to a conviction for which a defendant was not deprived of his civil rights thereby precluding such a conviction as a predicate offense under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1)?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

PAGE

Question Presented for Review ii

List of Parties iii

Table of Contents iv

Index to Appendices iv

Table of Authorities v

Opinions Below 1

Jurisdiction 2

Constitutional Provisions, Statutes and Sentencing Guidelines Involved 3

Statement of the Case 4

Reasons for Granting the Writ 6

I. Overview 6

II. Conflict Between Court of Appeals Decision and Established Supreme Court Precedent 8

III. Importance of the Issue 10

Conclusion 11

INDEX TO APPENDICES

Appendix A ..... App. 1 - App. 9

Appendix B ..... App. 10 - App. 12

TABLE OF AUTHORITIES

CASES — PAGE

Dickerson v. New Banner Institute, Inc., 460 U.S. 103 (1983) *10*

McGrath v. United States, 60 F.3d 1005 (2d Cir. 1995) 6, 8, 9, 10, 11

United States v. Cassidy, 899 F.2d 543 (6th Cir. 1990) *7*

United States v. Indelicato, 97 F.3d 627 (1st Cir. 1996) 8, 9

United States v. Logan, 453 F.3d 804 (7th Cir. 2006) 6, 9, 10, 11

STATUTES AND RULES

18 U.S.C. § 921(a)(20) ..... *passim*

18 U.S.C. § 921(a)(33)(B)(ii) 7

18 U.S.C. § 922(g) 3

18 U.S.C. § 922(g)(1) 3, 4, 6, 8, 10

18 U.S.C. § 922(g)(9) 7

18 U.S.C. § 924(e)(1) ..... ii, 3, 4, 5, 6

18 U.S.C. § 924(e)(2)(B)(i) 7

28 U.S.C. § 1254(1) 2

Wis. Stat. §939.62(1)(a) 4, 5

Wis. Stat. § 940.19(1) 4, 5

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner, James D. Logan, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit appears at Appendix A to the Petition and is reported at 453 F.3d 804.

The decision of the United States District Court for the Western District of Wisconsin appears at Appendix B to the Petition and was not reported.

JURISDICTION

The United States Court of Appeals for the Seventh Circuit decided Petitioner's case on July 6, 2006. Neither party filed a petition for rehearing in the court of appeals. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND SENTENCING GUIDELINES INVOLVED

18 U.S.C. § 921(a)(20) provides:

The term "crime punishable by imprisonment for a term exceeding one year" does not include-

> (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
>
> (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.
>
> What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

18 U.S.C. § 924(e)(1) provides:

In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years . . . .

STATEMENT OF THE CASE

On June 22, 2005, a grand jury sitting in the Western District of Wisconsin returned a one-count indictment against James Logan that alleged possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1). The charge was based on evidence obtained on May 31, 2005, when law enforcement officers responded to a call at a residence in Janesville, Wisconsin.

Pursuant to a plea agreement, Logan pleaded guilty to the one-count indictment on September 28, 2005. The plea agreement set forth the maximum penalty of imprisonment at ten years, and made no mention of the penalty provisions under 18 U.S.C. § 924(e)(1). The district court accepted Logan's plea of guilty conditioned upon the preparation of the presentence report ("PSR").

The PSR indicated that Logan may qualify as an armed career criminal and for enhanced penalties under 18 U.S.C. § 924(e)(1). An addendum to the PSR set out the convictions which would qualify Logan as an armed career criminal. Three prior convictions formed the basis for the PSR's suggestion and the government's argument that Logan was an armed career criminal. On December 14, 1988, Logan was convicted of misdemeanor battery as a repeater under Wis. Stat. §§ 940.19(1) and 939.62(1)(a). On February 15, 1988, Logan was convicted of misdemeanor battery

as a repeater under Wis. Stat. §§ 940.19(1) and 939.62(1)(a). On March 6, 2001, Logan was convicted of misdemeanor battery as a repeater under Wis. Stat. §§ 940.19(1) and 939.62(1)(a). Logan objected to each paragraph containing a supposed predicate conviction, arguing that none of the convictions qualified Logan for enhanced penalties under 18 U.S.C. § 924(e)(1).

At the December 7, 2005 sentencing hearing, the district court judge rejected the plea agreement which contained the ten-year maximum penalty because it did not adequately represent the defendant's criminal conduct, that is, the criminal conduct to which the Court believes it should have the opportunity to address.

Logan persisted with his plea of guilty, and a second sentencing hearing was scheduled for December 16, 2005. No plea agreement was reached. At the December 16, 2005 sentencing hearing, the district court found that Logan was an Armed Career Criminal and imposed the mandatory minimum penalty of 180 months as required by 18 U.S.C. § 924(e)(1).

On appeal, Logan argued that his three misdemeanor battery convictions punishable by three years imprisonment do not qualify as predicates for the sentencing enhancement under 18 U.S.C. §924(e)(1). Logan argued that because § 921(a)(20) excludes from the definition of "conviction" any offense that "has been expunged, or

set aside or for which a person has been pardoned or has had civil rights restored . . . unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms" and his three prior convictions counted by the district court as predicates did not result in the loss of his civil rights, then those convictions should be treated the same as a conviction for which civil rights were lost and later restored.

The court of appeals held that "[t]he word 'restore' means to give back something that had been taken away," and that "the 'restoration' of a thing never lost or diminished is a definitional impossibility." *United States v. Logan*, 453 F.3d 804, 805 (7th Cir. 2006) (quotations omitted). Consequently, it followed the rational of *McGrath v. United States*, 60 F.3d 1005 (2d Cir. 1995) that civil rights that have not been taken away cannot be restored, and upheld Logan's 180-month sentence as an armed career criminal.

REASONS FOR GRANTING THE WRIT

I. Overview.

In order to qualify for enhanced penalties under § 924(e)(1), a defendant convicted of violating § 922(g)(1) must have three previous convictions for a violent felony or a serious drug offense. *See* 18 U.S.C. § 924(e)(1). A violent felony is a

crime punishable by imprisonment for a term exceeding one year that has as an element "the use, attempted use, or threatened use of physical force against the person of another." *See* 18 U.S.C. § 924(e)(2)(B)(i). The term, "crime punishable by imprisonment for a term exceeding one year" does not include misdemeanors punishable by a term of imprisonment of two years or less, nor does a conviction count which "has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored . . . unless such . . . restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."[1] *See* 18 U.S.C. § 921(a)(20). Conversely, the restoration provision in § 921(a)(33)(B)(ii), which is relevant to convictions for individuals in possession of a firearm after conviction for a misdemeanor crime of domestic violence in violation of 18 U.S.C. § 922(g)(9), only applies to "civil rights [that have been] restored (if the law of applicable jurisdiction provides for the loss of civil rights under such an offense)."

The ordinary reading of the "restored" provision would seem not to apply to Logan because his civil rights were never taken away in the first place. Section 921(a)(20) is clear that it includes individuals whose civil rights have been taken away

---

[1]Although Congress has not defined "civil rights," a defendant's "civil rights" are widely accepted to include that person's right to vote, hold public office, and the right to serve on a jury. *United States v. Cassidy*, 899 F.2d 543, 549 (6th Cir. 1990).

and then later restored. But it is unclear, by the plain meaning of the provision, as to whether Congress intended to treat differently those individuals convicted of misdemeanors who never had their civil rights taken away.

II. Conflict Between Court of Appeals Decision And Established Supreme Court Precedent.

There is a circuit split on the issue of the application of the Armed Career Criminal Act with regard to misdemeanants who have never had their civil rights taken away, with the circuits falling into one of two camps: those that follow *United States v. Indelicato*, 97 F.3d 627 (1st Cir. 1996) and those that follow *McGrath v. United States*, 60 F.3d 1005 (2nd Cir.1995).

In *Indelicato* the defendant had two prior misdemeanor convictions under Massachusetts state law punishable by a maximum of two and one-half years in prison. Subsequent to those convictions, Indelicato was arrested with firearms and indicted for a violation of § 922(g)(1). The court found that the "civil rights restored" provision in § 921(a)(20) had the same effect on someone like Indelicato who had never had his civil rights taken away, as it did on someone who had their civil rights taken away and subsequently restored by operation of statute. The First Circuit found no sound reason why Congress would intend for a misdemeanant whose civil rights were never taken away to be more exposed to federal prosecution than a felon whose

rights were taken away and then later restored. *Indelicato*, 97 F.3d at 630. At the core of this inquiry is the status of a person's civil rights and whether a state deems that person sufficiently trustworthy to possess firearms, *Id.* (*citing McGrath*, 60 F.3d at 1009), not whether those rights had been taken away and later restored. *Id.*

In *McGrath*, the Second Circuit held that a person convicted of a felony who did not lose his civil rights under state law could not fall within the protection of the "unless" clause of § 921(a)(20) because the restoration of a thing never lost or diminished is a definitional impossibility. *McGrath*, 60 F.3d at 1007.

The Seventh Circuit followed the *McGrath* approach when it held that "[c]ompelled to choose between the holding of *Indelicato* and that of *McGrath*, we take the second circuit's part. The reason is simple. The word 'restore' means to give back something that had been taken away. As *McGrath* remarked, 'the "restoration" of a thing never lost or diminished is a definitional impossibility.'" *Logan*, 453 F.3d at 805.

Because there is a split between the circuits on the issue of the applicability of the Armed Career Criminal Act to misdemeanants who have never had their civil rights taken away, this Court should issue a writ of certiorari.

III. Importance Of The Issue.

The practical result of the Seventh Circuit's decision is counter-intuitive. It leaves a past felon or misdemeanant who has lost none of his civil rights and who can possess a firearm under state law exposed to conviction under federal law only because his civil rights technically have not been restored since he never lost them in the first place. This approach focuses too literally on the term "restored" and ignores the underlying principle and common sense application of the statute.

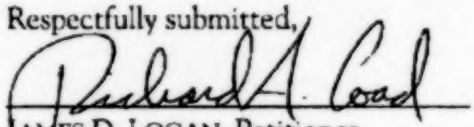
Moreover, the Seventh Circuit's holding in *Logan* and all those that follow the *McGrath* approach broadens the prosecutorial opportunities of the government beyond what was envisioned by the authors of the Fire Arms Owners Protection Act. It was passed in response to the Supreme Court's decision in *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 111-12, 115 (1983) that state expunctions of state convictions did not avoid the ban of § 922(g)(1). The amendment added the restoration exception of § 921(a)(20) in order to protect gun owners (even those with felony convictions) who possessed their civil rights from prosecution under § 922(g)(1). To read the restoration provision as the Seventh Circuit did effectively allows the government, under the authority of § 922(g)(1), to prosecute misdemeanants who have never lost their civil rights under state law. Because the

holding of *Logan*, and *McGrath* now open up many United States Citizens to potential prosecution, this court should issue a writ of certiorari.

CONCLUSION

Petitioner prays that the Court grant a writ of certiorari and set this case for briefing and plenary consideration.

Respectfully submitted,



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In the
United States Court of Appeals
For the Seventh Circuit

No. 05-4722

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES D. LOGAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Wisconsin.
No. 05-CR-088-S-01—**John C. Shabaz**, *Judge.*

ARGUED JUNE 8, 2006—DECIDED JULY 6, 2006

Before EASTERBROOK, ROVNER, and EVANS, *Circuit Judges.*

EASTERBROOK, *Circuit Judge.* This appeal presents a single question: whether a state conviction that did not result in a deprivation of civil rights can be a predicate offense under the Armed Career Criminal Act, 18 U.S.C. §924(e)(1). That statute enhances the penalty for gun-toting felons whose prior convictions include at least three violent crimes or serious drug offenses. A conviction that a state classifies as a misdemeanor counts if the punishment can exceed two years. 18 U.S.C. §§ 921(a)(20)(B), 924(e)(2)(B). Logan has (in addition to one concededly qualifying drug felony conviction) three battery convictions that, though called misdemeanors in Wisconsin, carried maximum terms of three years' imprisonment and are treated as "violent

felonies" by §924(e). Nonetheless, Logan maintains, they should be disregarded because the last sentence of §921(a)(20) excludes from the definition of "conviction" any offense that "has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored . . . unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."

Logan contends that a conviction that did not result in the loss of the rights to vote, hold public office, and serve on juries should be treated the same as a conviction following which those rights were terminated but later restored. This argument has the support of *United States v. Indelicato*, 97 F.3d 627 (1st Cir. 1996). The district court held, however, that an offender whose civil rights have been neither diminished nor returned is not a person who "has had civil rights restored". That conclusion, which has the support of *McGrath v. United States*, 60 F.3d 1005 (2d Cir. 1995), led to a 180-month sentence, the minimum for any armed career criminal.

Compelled to choose between the holding of *Indelicato* and that of *McGrath*, we take the second circuit's part. The reason is simple. The word "restore" means to give back something that had been taken away. As *McGrath* remarked, "the 'restoration' of a thing never lost or diminished is a definitional impossibility." 60 F.3d at 1007. Logan does not deny this, nor did the panel in *Indelicato*. That court recognized that it was going in the teeth of the statutory text but decided to do so because (a) it thought the statute silly—for why *should* someone whose civil rights were never taken away receive a higher federal sentence than a person who lost and then regained those rights?—and (b) no legislative history shows that Congress meant to distinguish between convicts who never lost civil rights and those who lost but regained them.

The second of these reasons is a makeweight. Statutes do not depend, for their force, on some statement in the

legislative history along the lines of: "We really mean it!" See, e.g., *Swain v. Pressley*, 430 U.S. 372, 378-79 (1977); *Harrison v. PPG Industries, Inc.*, 446 U.S. 578, 591-92 (1980). Today's Supreme Court uses legislative history only to resolve ambiguities in enacted texts. Even the plainest legislative history does not justify going against an unambiguous enactment. See *Arlington Central School District v. Murphy*, No. 05-18 (U.S. June 26, 2006), slip op. 11-12; *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 125 S. Ct. 2611, 2625-27 (2005). (Nor does explicit legislative history justify the creation of a legal rule on a subject about which the statute is silent. See *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446 (7th Cir. 2005).) And if legislative history directly addressing a subject does not free a court from enacted language, the *absence* of legislative history cannot do so. See *Whitfield v. United States*, 543 U.S. 209, 215-16 (2005).

As for *Indelicato*'s first reason: this is a variant on the proposition that courts read statutes to make sense rather than nonsense. Absurd possibilities are ruled out. We call *Indelicato*'s approach a variant of the anti-absurdity canon, however, because the first circuit did not mention it—and for good reason. The statute is not absurd as written. Its text parses; there is no linguistic garble. The canon is limited to solving problems in exposition, as opposed to the harshness that a well-written but poorly conceived statute may produce. See *Jaskolski v. Daniels*, 427 F.3d 456 (7th Cir. 2005). Accord, *Robbins v. Chronister*, 435 F.3d 1238 (10th Cir. 2006) (en banc). Otherwise judges would have entirely too much leeway to follow their own policy preferences by declaring that the legislative choice is harsh or jarring. See, e.g., Adrian Vermeule, *Judging Under Uncertainty* 57-59 (2006); John Manning, *The Absurdity Doctrine*, 116 Harv. L. Rev. 2387 (2003).

The Supreme Court insists that statutes be enforced as written even when they seem mistaken or pointless—for

it is exactly then that the temptation to substitute one's judgment for the legislature's is strongest. See, e.g., *Dodd v. United States*, 545 U.S. 353 (2005) (the statute of limitations for collateral attacks on criminal convictions must be enforced as written even though time may expire before a challenge becomes possible, and even though this possibility likely resulted from legislative oversight); *Chapman v. United States*, 500 U.S. 453 (1991) (sentence for LSD must be based on the weight of the carrier medium as well as that of the drug, even though the carrier may be hundreds of times heavier and Congress may not have understood that LSD differs from other illegal drugs in this way). Laws are not "harsh" or "pointless" in any value-free framework; they seem harsh or pointless by reference to a given judge's beliefs about how things ought to work, which is why a claim of power to revise "harsh" or "pointless" laws elevates the judicial over the legislative branch and must be resisted. See *Tyler v. Cain*, 533 U.S. 656, 663 n.5 (2001).

Indelicato assumed that judges may correct a legislature's mistakes and oversights. It did not, however, identify any source of authority to do this—or for that matter explain why this statute is a botch. True enough, someone whose civil rights have not been revoked cannot have them restored. But restoration of civil rights is just one of three ways to erase a conviction from one's record for purposes of federal law. The other two—expungement and pardon—are as available to people who never lost their rights to vote, hold office, and serve on juries, as they are to other offenders.

Section 921(a)(20) acquired its current form in 1986 as a reaction to *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103 (1983). *Dickerson* held that federal rather than state law defines a "conviction" for purposes of 18 U.S.C. §§ 922 and 924, and that under federal law a conviction supports recidivist enhancements even after it has been expunged by the rendering court. The 1986 legislation makes the effect

of a conviction turn on state law—with the proviso that a pardon or restoration of rights removes the conviction for federal purposes, even if state law still would count it as a criminal conviction, "unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." That's a federal anti-mousetrapping rule overlain on state law; a person told that his civil rights have been restored may assume that this means *all* rights unless he is informed that the right to vote (and so on) does not imply a right to carry firearms. See *United States v. Erwin*, 902 F.2d 510, 512-13 (7th Cir. 1990). Logan has not been misled by any state act that apparently freed him from the legal consequences of his battery convictions.

When Congress replaced *Dickerson*'s uniform federal rule with a state definition of conviction, it ensured that similarly situated people would be treated differently—for states vary widely in which if any civil rights a convict loses and whether these rights are restored. Some states deprive almost all convicts of these rights but restore them automatically after a set period. See *Caron v. United States*, 524 U.S. 308, 313-14 (1998) (agreeing with appellate consensus that restoration by operation of law has the same legal effect as restoration by act of personal clemency). Others take away fewer rights and make them harder to regain. The Office of the Pardon Attorney has compiled a list of these differences that conveys the flavor, though it may be out of date. U.S. Department of Justice, *Civil disabilities of convicted felons: a state-by-state survey* (1996), available at http://www.usdoj.gov/pardon/forms/ state_survey.pdf. Vermont, for example, permits felons not only to vote from prison (they get absentee ballots) but also to hold office, but not to serve on juries; New Hampshire permits them to serve on juries but not to vote until after release (and restoration then is automatic); other states take away all three rights (plus the right to carry firearms) and don't

restore them except via executive clemency. Most states would call the batteries of which Logan was convicted felonies and deprive the offender of civil rights (for in most states the dividing line between misdemeanor and felony is a maximum term of one year's imprisonment). Wisconsin ordinarily puts the dividing line lower: misdemeanor sentences can't exceed nine months in a local jail, and any time at all in the state prison system depends on a felony conviction. Wis. Stat. §939.60. Low sentences are accompanied by a rule that misdemeanants retain the right to vote. But even a misdemeanor conviction for battery by a repeat offender can carry a three-year sentence. See Wis. Stat. §939.62, §940.19(*l*). No reading of §921(a)(20) could produce identical treatment (for purposes of federal recidivist prosecutions) of people who commit the same crimes in different states.

When the first circuit in *Indelicato* combined what it perceived as an infelicitous enactment with the absence of "We really mean it!" legislative history, it was nodding in the direction of imaginative reconstruction—the idea that a court may implement what it is sure the legislature would have done (had it faced the question explicitly) rather than what the legislature actually did. The Supreme Court has anathematized that approach as democratically illegitimate, for it sets up the judiciary as the effective lawmakers. See, e.g., *West Virginia University Hospitals, Inc. v. Casey*, 499 U.S. 83, 100-01 (1991) (calling imaginative reconstruction a "usurpation" that "profoundly mistakes [the judicial] role"); *Tafflin v. Levitt*, 493 U.S. 455, 461-62 (1990) ("Petitioners . . . insist that if Congress had considered the issue, it would have [adopted a particular rule]. This argument . . . is misplaced, for even if we could reliably discern what Congress' intent might have been had it considered the question, we are not at liberty to so speculate"). This case illustrates the practical as well as the theoretical failings in that doctrine, for *Indelicato*'s guess about what Congress "would have done, had it thought" turns out to be wrong.

Section 922(g)(9) of the criminal code makes it unlawful for anyone "who has been convicted in any court of a misdemeanor crime of domestic violence" to possess a firearm that is connected with interstate commerce. This section has a definitional provision corresponding to §921(a)(20). That provision, 18 U.S.C. §921(a)(33)(B)(ii), reads: "A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." This tracks §921(a)(20) in treating expungement, pardon, or restoration of civil rights as canceling all effect of the conviction—but it shows that the "restoration of civil rights" clause is inapplicable to one whose civil rights were never taken away. For such persons, expungement and pardon are the only ways to regain the right to possess firearms. In other words, when Congress addressed this subject directly, it supported the second circuit's conclusion in *McGrath*, not the first circuit's prediction in *Indelicato*.

Defendants have argued that §921(a)(33)(B)(ii) is itself absurd, and should not be applied as written, because (for example) the governor's pardon power in some states does not reach misdemeanor convictions. With one exception these arguments have been rejected, and courts have enforced this statute while noting, as *McGrath* had done for §921(a)(20), that the differences in state rules can lead otherwise identical offenders to be treated differently under federal law. See *United States v. Jennings*, 323 F.3d 263, 267-69 (4th Cir. 2003); *United States v. Kirchoff*, 387 F.3d 748 (8th Cir. 2004); *United States v. Smith*, 171 F.3d 617, 624-26 (8th Cir. 1999); *United States v. Hancock*, 231 F.3d

557, 566-67 (9th Cir. 2000); *United States v. Barnes*, 295 F.3d 1354, 1368 (D.C. Cir. 2002).

The outlier is *United States v. Wegrzyn*, 305 F.3d 593 (6th Cir. 2002). Persons convicted of domestic-violence misdemeanors in Michigan lose their right to vote only while incarcerated; it is restored automatically on release. Wegrzyn, who received a suspended sentence following his conviction, therefore did not lose any civil right. Without citing *McGrath*, *Indelicato*, or any of the earlier decisions under §921(a)(33)—for that matter, without parsing the statutory language—the sixth circuit declared that it would be absurd to treat more harshly (under federal law) someone who received a suspended sentence in Michigan than someone who had gone to prison there (presumably for a more serious domestic battery); *Wegrzyn* refused to apply the federal statutes as enacted. This shows that even when Congress addresses a subject as directly as possible—for §921(a)(33)(B)(ii) says point blank that people who were not deprived of their civil rights under state law differ from those whose rights were stripped and then restored—some judges still balk at applying what they find to be an unpalatable rule. *Wegrzyn*'s holding has been universally rejected by other courts that have addressed the identical question. In addition to *Jennings* and *Kirchoff*, see *United States v. Bailey*, 408 F.3d 609 (9th Cir. 2005). Just as the fourth circuit's opinion in *Jennings* disparaged *Indelicato* to the extent its approach reflected on the best understanding of §921(a)(33)(B)(ii), so we disapprove *Wegrzyn* to the extent its approach bears on the best understanding of §921(a)(20). Both of these statutes create ample potential for disparate treatment, but that's inherent in the legislative choice to make federal sentences depend on the states' different (and often internally inconsistent) approaches to revoking and restoring civil rights.

What a federal court *can* do, as a uniform matter, is count all state convictions unless the state extends a measure of

forgiveness. The last sentence of §921(a)(20) specifies how forgiveness is to be conveyed: pardon, expungement, or a restoration of civil rights. Logan's battery convictions did not qualify for the third means (though he *had* lost his civil rights in Wisconsin on account of his drug offense and never got them back) but potentially qualified for the first and second. So far as this record reveals, however, Logan never sought expungement or a pardon (and we know that, if he sought one, he did not obtain that boon). Wisconsin has neither forgiven him nor misled him about the (federal) consequences of his convictions, and as his convictions are serious enough to come within the federal definition of violent felonies they require sentencing as a recidivist under the Armed Career Criminal Act.

AFFIRMED

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES DISTRICT COURT
Western District of Wisconsin
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December 22, 2005

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Subject: **James D. Logan**
Docket No. 05-CR-88-S-01
Statement of Reasons - Confidential

Richard Coad:

Enclosed is the Statement of Reasons for the above defendant. Per the August 13, 2001, memo from the Administrative Office, this is being provided to you under separate cover from the Judgment and Commitment Order. **This document is confidential and is not for public disclosure.**

Sincerely,

Kristi Bakken/slh

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Enclosure

(ATTACHMENT to the Judgment in a Criminal Case - NOT FOR PUBLIC DISCLOSURE)

STATEMENT OF REASONS

James D. Logan
Case No. 05-CR-088-S-01

The Court accepts defendant's guilty plea and proceeds with sentencing absent a written plea of agreement. In doing so, defendant is aware of the possibility that he is subject to a statutory minimum of 15 years and a maximum of life imprisonment pursuant to 18 U.S.C. § 924(e).

In McReynolds v. United States, 397 F.3d 479 (7th Cir. 2005), the Seventh Circuit Court of Appeals has ruled that the remedial portion of Booker, which holds that decisions about sentencing factors will continue to be made by judges on the preponderance of the evidence, is an approach that comports with the Sixth Amendment so long as the guideline system has some flexibility in application.

The Court imposes a sentence consistent with the provisions set forth in 18 U.S.C. § 3553(a) using the November 2005 amended advisory guidelines calculated by the probation office in determining the appropriate sentence within the statutory limit of the count of conviction. The Court notes that the criminal history category of V has been reduced to category IV based on the omission of two points that had been assessed in paragraph 36 of the presentence investigation report. The two points are not counted because the conviction is outside the applicable time period allowed under § 4A1.2(e)(2). The advisory guideline calculations take into account all of the defendant's relevant conduct as defined at § 1B1.3. These calculations start with a base offense level of 20 under § 2K2.1(a)(4)(A) because the defendant committed the offense subsequent to sustaining a violent felony conviction. The subtotal of the offense level would ordinarily be 20; however, the defendant is subject to an enhanced sentence under the provisions of 18 U.S.C. § 924(e) and is also considered an Armed Career Criminal under the provisions of § 4B1.4. The Court finds that the defendant has three prior felony convictions for crimes of violence, specifically: battery as a repeater, Rock County Circuit Court, Case No. 87CR933; battery as a repeater, Rock County Circuit Court, Case No. 88CR817; and battery - habitual criminality, Rock County Circuit Court, Case No. 00CM371. The Court having determined that for each of these offenses, the defendant was found guilty as a repeater and the statutory maximum penalties associated with each conviction was three years. Accordingly, the battery convictions make the § 924(e) enhancement applicable to this case. These violent felonies each had as an element the use, attempted use or threat of physical force against the person of another and all convictions were "crimes punishable by a term of imprisonment exceeding one year." He never lost his civil rights which is equivalent to "restoration." His civil rights were not restored because he never suffered the loss of them. Restoration applies only to defendants whose civil rights were both lost and restored pursuant to state statutes. Under § 4B1.4(b)(3)(B) this results in a subtotal offense level 33. A two-level reduction is applicable under § 3E1.1(a) for acceptance of responsibility and an additional one-level reduction under subsection (b) because the defendant provided timely notification of his intention to enter a guilty plea. Under § 4B1.4(c)(3), the defendant's criminal history category remains at IV.

Pairing a total offense level of 30 with a criminal history category IV results in an advisory guideline imprisonment range of 135 to 168 months. However, a minimum 15-year or 180-month imprisonment term is required under 18 U.S.C. § 924(e).

The defendant is a 39-year-old violent felon with multi-convictions. He was arrested by Janesville police after they responded to a domestic disturbance complaint and recovered a loaded 9mm pistol and drug paraphernalia from his vehicle. He has a scant work history and reportedly has relied on his "barbering" skills as his primary means of support. Defendant has stated he is a long term heroin addict. He admittedly has not been a part of his nine children's lives or provided any financial support over the years as evidenced by the approximate $95,000 he owes in arrears. Defendant has not been deterred from committing further criminal conduct. His criminal history extends back to his adolescent years. Many of his early convictions were not considered in determining his criminal history category because the convictions occurred ten years prior to this offense. He also had a number of cases (many with active warrants) that were pending when he committed this offense.

The Court imposes the minimum 180-month imprisonment term as required by statute. Considering the nature and circumstances of the offense as well as the history and characteristics of the defendant, the Court determines this amount of time is reasonable, responsible, relevant and necessary to satisfy the statutory purposes of sentencing under 18 U.S.C. § 3553 which in this case is to physically incapacitate the defendant in order to protect the community from his undeterred and dangerous criminal conduct. This amount of time will also afford him the opportunity to participate in vocational training and substance abuse treatment in preparation for his eventual release back into the community.

Advisory Guideline Range Determined by the Court:	
Total Offense Level:	30
Criminal History Category:	IV
Imprisonment Range:	135 to 168 months
Supervised Release:	2 to 3 years
Fine Range:	$5,000.00 to $50,000.00
Restitution:	not applicable